

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP No.: 573 of 2006.

Reserved on: 13.06.2007.

Decided on: 16.06.2007.

Shri Laber Ram.

Versus

... .. **Petitioner.**

State of Himachal Pradesh and Others.

... .. **Respondents.**

Coram:

The Hon'ble Mr. Justice Rajiv Sharma, J.

Whether approved for reporting?¹ Yes.

For the petitioner: **Mr. R.K. Bawa, Sr. Advocate with
Mr. R.P. Thakur, Advocate.**

For Respondents No.1 to 3: **Mr. M.S. Chandel, Advocate
General with Mr. M.A. Khan and
Ms. Meenakshi Sharma, Deputy
Advocate Generals.**

For Respondents No.4 to 6: **Mr. Shrawan Dogra, Advocate.**

Rajiv Sharma, Judge:

The brief facts necessary for the adjudication of this petition are that the petitioner and his mother are the owners in possession of the land comprised in Khata/Khatauni No.73/120 min, Khasra No.1976/565, measuring 1-4-10 Hectares and Khata/Khatauni No.74/121, Khasra No.2017/80, measuring 1-12-11 Hectares

Whether reporters of local papers may be allowed to see the judgment? Yes.

situated in Mauza Thara/216, Pargana Langana, Tehsil Jogindernagar, District Mandi, Himachal Pradesh. It is averred in the petition that the respondents had started construction of Raktal to Gadiayara Road in the year 2004 without acquiring the land of the petitioner in accordance with law. He filed a civil suit in the Court of learned Civil Judge (Junior Division), Jogindernagar being civil suit No.75/2004 titled as Laber Versus State of HP and others. The suit was filed on 24.4.2004. The learned Civil Judge (Junior Division) had granted interim order in favour of the petitioner. He had withdrawn the civil suit on 10.9.2004 on the basis of the statement of Shri Anil Kumar, Assistant Engineer, H.P., PWD. It will be apt to reproduce the statement of Shri Anil Kumar, Assistant Engineer as under:-

“It is stated that the defendants will not carry any construction on the land of the plaintiff. In case the department intends to carry out any construction in that event prior consent of the plaintiff will be obtained or proper proceedings will be carried out for the acquisition of the land.”

Mr. R.K. Bawa, Sr. Advocate, with Mr. Raj Pal Thakur, Advocate, has strenuously argued that the land of the petitioner has been utilized by the respondents for the construction of road without paying any compensation to him in accordance with law. Mr. Bawa had further submitted that earlier the construction was being undertaken by respondents No.1 to 3, but ultimately the construction of the road, i.e. Raktal to Gadiayara was undertaken by respondents No.4 to 6.

The learned Advocate General had submitted that though the State had carried out certain preliminary surveys, but it was the respondents No.4 to 6 who had constructed the road in question. Mr. Shrawan Dogra appearing on behalf of respondents No.4 to 6 had submitted that the road in question, i.e. Raktal to Gadiayara had been constructed from the welfare funds on the persistent demand of the residents of the area who according to him have also given affidavits for utilizing their land without compensation.

I have heard the parties and also gone through the record.

Admittedly, the land of the petitioner measuring 1-4-10 and 1-12-11 hectares had been used by the respondents for construction of Raktal to Gadiayara Road w.e.f. October, 2005 to February, 2006. The petitioner had filed civil suit when the survey was being conducted by the State. The civil suit was withdrawn on the basis of the statement as reproduced hereinabove on 10.9.2004. It is, thus, clear that the petitioner had never intended that his land could be utilized without paying him any compensation. The petitioner at no given time had filed any affidavit that his land could be utilized without paying compensation. The affidavits, i.e. Annexures R-1 to R-13 are of the other villagers. The petitioner had placed on record Annexures P-8 and P-9 and it can safely be culled out from the contents of these two documents that the petitioner was ready and willing to give his consent for the utilization of the land only in the eventuality of the land being acquired in accordance with law. The respondents No.1 to 3 have categorically admitted in the reply that

no notification under Section 4 of the Land Acquisition Act, 1894 for acquiring the suit land had been issued and that the respondents No.4 to 6 had constructed the road through the suit land and no request had been made by respondents No.4 to 6 to acquire the suit land of the petitioner. The respondents No.4 to 6 had also admitted the construction of the road on the petitioner's land w.e.f. October, 2005 to February, 2006 out of welfare funds. The fact of the matter is that the petitioner's land has been utilized for the construction of Raktal to Gadiayara road without paying any compensation. The petitioner's land could only be utilized by respondents No.4 to 6 in accordance with law as per Article 300-A of the Constitution of India.

The Hon'ble apex Court has held in ***Hindustan Times and Others Versus State of U.P. and Another, (2003) 1 SCC 591*** has held as under:-

“The expression “law”, within the meaning of Article 300-A, would mean a Parliamentary Act or an Act of the State Legislature or a statutory order having the force of law.

In *Bishambhar Dayal Chandra Mohan v. State of U.P.* this Court held as under: (SCC p.66, para 41)

“41. There still remains the question whether the seizure of wheat amounts to deprivation of property without the authority of law. Article 300-A provides that no person shall be deprived of his property save by authority of law. The State Government

cannot while taking recourse to the executive power of the State under Article 162, deprive a person of his property. Such power can be exercised only by authority of law and not by a mere executive fiat or order. Article 162, as is clear from the opening words, is subject to other provisions of the Constitution. It is, therefore, necessarily subject to Article 300-A. The word 'law' in the context of Article 300-A must mean an Act of Parliament or of a State Legislature, a rule, or a statutory order, having the force of law, that is positive or State-made law."

Their Lordships of the Hon'ble Supreme Court in ***P.T. Munichikkanna Reddy & Ors. Vs. Revamma and Ors., 2007(6)*** **SCALE 95** have held as under:

"There is another aspect of the matter, which cannot be lost sight of. The right of property is now considered to be not only a constitutional or statutory right but also a human right.

Declaration of the Rights of Man and of the Citizen, 1789 enunciates right to property under Article 17:

"since the right to property is inviolable and sacred, no-one may be deprived thereof, unless public necessity, legally ascertained, obviously requires it and just and prior indemnity has been paid".

Moreover, Universal Declaration of Human Rights, 1948 under section 17(i) and 17(ii) also recognizes right to property:

“17 (i) Everyone has the right to own property alone as well as in association with others.

(ii) Non-one shall be arbitrarily deprived of his property.”

Human rights have been historically considered in the realm of individual rights such as, right to health, right to livelihood, right to shelter and employment etc. but now human rights are gaining a multifaceted dimension. Right to property is also considered very much a part of the new dimension. Therefore, even claim of adverse possession has to be read in that context. The activist approach of the English Courts is quite visible from the judgment of Beaulane Properties Ltd. v. Palmer [2005 (3) WLR 554 : 2005 EWHC 817 (Ch.)] and JA Pye (Oxford) Ltd v. United Kingdom [2005] ECHR 921 [2005] 49 ERG 90, [2005] ECHR 921’ The court herein tried to read the Human Rights position in the context of adverse possession. But what is commendable is that the dimensions of human rights has widened so much that now property dispute issues are also being raised within the contours of human rights.”

The upshot of the above discussion is that the land of the petitioner comprised in Khata/Khatauni No.73/120 min, Khasra No.1976/565, measuring 1-4-10 hectares and Khata/Khatauni No.74/121, Khasra No.2017/80, measuring 1-12-11 hectares situated in Mauza Thara/216, Pargana Langana, Tehsil Jogindernagar, District Mandi, H.P. has been utilized by

respondents No.4 to 6 for construction of Raktal to Gadiayara road w.e.f. October, 2005 to February, 2006 without paying any compensation to the petitioner. The respondents No.1 to 3 had admitted that no notification under the relevant provisions of Land Acquisition Act, 1894 has been issued for acquiring the land on behalf of respondents No.4 to 6.

Accordingly, this petition is allowed and the respondents are directed to acquire the land of the petitioner, which has been utilized for the construction of Raktal to Gadiayara road within a period of six months. No order as to costs.

June 16, 2007
(sck).

(Rajiv Sharma)
Judge